

§ 416.1403 Administrative actions that are not initial determinations.

(a) * * * * *

(2) An emergency advance payment (as defined in § 416.520(b)).

(b) * * * * *

(1) If you receive an emergency advance payment or presumptive disability or presumptive blindness payments, we will provide a notice explaining the nature and conditions of the payments.

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BILLING CODE 4190-11-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 141, 142 and 143**

[WH-FRL-3720-6]

National Primary Drinking Water Regulations; Public Notification of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: In September 1989, EPA published a handbook, *General Public Notification for Public Water Systems*, in support of the revised public notification regulation under the Safe Drinking Water Act. The revised public notice regulation was published on October 28, 1987 (52 FR 41534). Technical amendments correcting errors in the revised rule were published on April 17, 1989 (54 FR 15185).

The handbook was developed to assist owners, operators, and managers of public water systems in carrying out their responsibilities under the revised rules. The handbook explains the EPA requirements and gives examples of types of public notices which the agency considers acceptable. In addition, the handbook discusses public notification requirements for violations of the primary and secondary drinking water standards for fluoride, and notification requirements for unregulated contaminants.

The handbook provides an explanation of the federal regulations only. States having primary responsibility (i.e., "primacy") for administering the public drinking water program in lieu of EPA are required to adopt public notification regulations that are at least as stringent as the federal requirements. Currently, all states and insular areas—with the

exception of the District of Columbia, Indiana, Wyoming, and all Indian tribes—have primacy. Public water systems are encouraged to contact their primacy agent before issuing public notice to ensure compliance with state requirements.

ADDRESSES: To obtain a single copy of the handbook, write to U.S. Environmental Protection Agency, Office of Drinking Water (WH-550), 401 M Street, SW., Washington, DC 20460, attention: Charlene Shaw.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426-4791, or in Washington, DC at (202) 382-5533, or Carl Reeverts, Deputy Director, State Programs Division, Office of Drinking Water, 401 M Street, SW., Washington, DC 20460, telephone (202) 382-5522.

Dated: January 26, 1990.

Robert H. Wayland,

Acting Assistant Administrator for Water.

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DEPARTMENT OF TRANSPORTATION**Research and Special Programs Administration****49 CFR Part 177**

[Docket No. HM-164D; Amdt. No. 177-75]

RIN 2137-AB78

Deletion of Appendix A to Part 177

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: RSPA is amending 49 CFR part 177 by deleting Appendix A thereto. Appendix A is a DOT policy statement which no longer is necessary.

EFFECTIVE DATE: February 8, 1990.

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Senior Attorney, Office of Chief Counsel, (202) 366-4400 or Ray Gassaway, Transportation Specialist, Office of Hazardous Materials Transportation, (202) 366-4488; Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001.

SUPPLEMENTARY INFORMATION: In 1981, the Research and Special Programs Administration published Appendix A to part 177 of 49 CFR in order to provide guidance to state and local governments about preemption issues arising under part 177. Entitled "Relationship Between

Routing Requirements in part 177 with State and Local Requirements," Appendix A expressly states that it is a DOT policy statement.

In a recent decision in *State of Ohio v. United States Department of Transportation*, C81-1394 (N.D. Ohio, October 4, 1989), the Court held invalid the provision in Appendix A which addresses state or local prenotification requirements. Despite DOT's position that Appendix A is merely a policy statement, the Court held, *inter alia*, that DOT had issued a "generic determination of inconsistency" without complying with its own inconsistency ruling regulations.

Following the Court's decision, RSPA reexamined all of Appendix A and determined that it no longer is necessary. Since the issuance of Appendix A in 1981, RSPA has addressed radioactive materials transportation preemption issues arising under the Hazardous Materials Transportation Act (HMTA), 49 U.S.C. App. 1801 *et seq.*, in numerous inconsistency rulings issued under 49 CFR 107.203 *et seq.*

RSPA's advisory inconsistency rulings were summarized in a notice printed in the Federal Register last June (54 FR 26710; June 23, 1989). The thoroughness with which RSPA's inconsistency rulings have discussed radioactive materials transportation issues is demonstrated by the following excerpt from that Federal Register Notice:

Since HMTA and HMR (Hazardous Materials Regulations; 49 CFR 100-199) have almost completely occupied the field of RAM (radioactive materials) transportation safety, state and local requirements are limited to: (1) Traffic control or restrictions applying to all traffic, (2) designation of preferred routes under 49 CFR 177.825, (3) adoption of Federal or consistent requirements, (4) enforcement of consistent requirements or those for which preemption has been waived, and (5) imposition of reasonable transit fees to finance those enforcement activities and emergency response preparedness. Thus, RAM transportation permits generally are inconsistent. *IR-8; *IR-8(A); *IR-10; *IR-11; *IR-12; *IR-13; *IR-15; *IR-18; *IR-18(A); *IR-19; *IR-19(A); *IR-20; *IR-21; *IR-21(A); *IR-27. [* indicates a RAM ruling; # indicates a ruling involving RAM and other hazardous materials.]

In light of the guidance provided by these and other inconsistency rulings discussing radioactive materials transportation issues, Appendix A is no longer required. Therefore, RSPA is removing it from the CFR.

Because this action removes from the CFR a policy statement for which prior

notice is not required under 5 U.S.C. 553, this document is published as a final rule. Similarly, because this publication involves a policy statement, it is effective immediately.

Administrative Notice

RSPA has determined that this final rule (1) is not "major" under Executive Order 12291; (2) is not "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises, or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (40 U.S.C. 4321 *et seq.*). A final regulatory evaluation was not prepared as this action is not a substantive change. I certify that this action will not, as promulgated, have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. I have reviewed this action in accordance with Executive Order 12612 ("Federalism"). It has no substantial direct effects on the States, on the Federal-State relationship or on the distribution of power and responsibilities among levels of government. Thus, this action contains no policies that have Federalism implications as defined in Executive Order 12612.

List of Subjects in 49 CFR Part 177

Hazardous materials transportation, Highway route controlled quantity, Radioactive materials, Routing, Shipping, Carriers.

In consideration of the foregoing, 49 CFR part 177 is amended as follows:

PART 177—CARRIAGE BY PUBLIC HIGHWAY

1. The authority citation for part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR part 1, unless otherwise noted.

Appendix A to Part 177—[Removed]

2. Appendix A to part 177 is removed.

Issued in Washington, DC on February 1, 1990, under authority delegated in 49 CFR part 1.

Travis P. Dungan,
Administrator, Research and Special
Programs Administration.

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JILLING CODE 4910-60-M

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 85-15; Notice 12]

RIN 2127-AC53

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: This notice responds to petitions for reconsideration of the final rule amending Motor Vehicle Safety Standard No. 108 that was published on May 9, 1989. It clarifies that High Intensity Discharge headlighting systems are not excluded as integral beam headlighting systems. Definitions of "beam contributor" and "vehicle headlamp aiming device" are adopted. Petitions asking for elimination of horizontal aim requirements are denied. Equipment marking requirements are modified to allow use of the vehicle manufacturer's name on original equipment. The lengthy informational label required by the final rule if certain aim performance is not achievable effective June 8, 1989, has been suspended. Under requirements effective September 1, 1990, the information on the label may be shortened to a caution, provided that it refers the reader to the operator's manual for a further explanation, and provided that the manual contains such information. Finally, clarifying information has been added to the requirement for torque deflection performance for mechanically-aimed headlamps.

EFFECTIVE DATE: The final rule is effective March 12, 1990, except that the requirements of S7.7.2.1 and S7.7.5.2(b) relating to information to be provided on a label on the vehicle, and in the operator's manual are effective September 1, 1990.

FOR FURTHER INFORMATION CONTACT: Richard Van Iderstine, Office of Rulemaking, NHTSA (202-368-5280).

SUPPLEMENTARY INFORMATION: On May 9, 1989, NHTSA published amendments to Federal Motor Vehicle Safety Standard No. 108 *Lamps, Reflective Devices, and Associated Equipment* (Notice 8, 54 FR 20066). In pertinent part, NHTSA added a new category of headlamps without dimensional requirements, known as "integral beam headlamps". An on-vehicle mechanical aim alternative to existing off-vehicle

mechanical aim was also adopted. Subsequently, on July 19, 1989, NHTSA published technical amendments to the rule (Notice 9, 54 FR 30223). Thereafter, on August 1, 1989, NHTSA published an interim final rule establishing a new effective date of December 1, 1989, for downward torque deflection requirements, and requested comments on its action (Notice 10, 54 FR 31687). In response to comments to that notice, the effective date was further delayed to September 1, 1990 (Notice 11, 54 FR 49296).

Petitions for reconsideration of various aspects of the amendment were filed by Ford Motor Company ("Ford"), General Motors Corporation ("GM"), Motor Vehicle Manufacturers Association ("MVMA"), Volkswagen of America ("VW"), and Koito Manufacturing Co., Ltd. ("Koito"). Chrysler Corporation adopted by reference the petition submitted by MVMA.

Discussion of Petitions

Issues Relating to Integral Beam Headlamp Systems

Paragraph S7.4 specifies requirements for integral beam headlamp systems. The intent of this new specification is to allow design freedom in meeting the photometric requirements specified by Standard No. 108. The design freedom permitted is wide enough to encompass headlamp systems of no specified dimensions, or systems in which more than one "beam contributor" combines to provide an upper or lower beam. However, some of the language adopted has been viewed as design restrictive. For example, section S7.4(f) contains the beam requirements for headlamps containing a single "filament", and section S7.4(i)(viii), in establishing criteria for the vibration test, requires no evidence of loose or broken parts other than "filaments". The High Intensity Discharge (HID) headlamps currently under development, and which may be offered on motor vehicles in the near future, do not contain filaments. Thus, the question arises whether NHTSA has impliedly excluded HID headlamps as an integral beam headlamp system by its use of the word "filaments". NHTSA did not intend to exclude HID systems, and has amended the two sections mentioned above, and section S5.5.9 as well, to remove any language that might be interpreted as barring HID systems.

VW recommended that the term "beam contributor" be defined. The agency concurs in this recommendation and a definition is added to section S4 to specify that a beam contributor is "an